



## DISCUSSION

In Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir 1983), the Ninth Circuit held that a would-be federal habeas petitioner must await the outcome of his appeal or other state post-conviction proceeding before his federal petition is ripe for review. Accord Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Even if the federal constitutional question raised by the petitioner cannot be resolved in a pending state post-conviction proceeding, that proceeding may result in the reversal of the petitioner's conviction and/or sentence on some other ground, thereby mooting the federal question. See Sherwood, 716 F.2d at 634 (citations omitted).

The rationale of Sherwood applies here: Petitioner must wait until the Supreme Court of California rules on the merits of his habeas petition before seeking federal habeas relief. In the interest of comity, the petition will be dismissed as premature and not yet ripe for review. See id.

## CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus is DISMISSED without prejudice to filing a new petition once all state judicial proceedings relating to petitioner's conviction and sentence are completed.

The clerk shall enter judgment in accordance with this order, terminate all pending motions as moot and close the file.

SO ORDERED.

DATED: Dec. 11, 2007

  
\_\_\_\_\_  
CHARLES R. BREYER  
United States District Judge